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## CONTRACT FOR SALE OF UTILITIES SERVICES

For use of this form, see AR 421-41; the proponent agency is the Office of the Chief of Engineers

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Contract No. \_\_\_\_\_  
Estimated Annual \_\_\_\_\_  
Cost to Purchaser \$ \_\_\_\_\_

THIS CONTRACT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ by and between the UNITED STATES OF AMERICA (*hereinafter called the "Government"*), represented by the Utilities Sales Officer executing this contract and

\_\_\_\_\_  
(*Hereinafter called the "Purchaser"*)

WITNESSETH THAT:

WHEREAS, the Government has established an \_\_\_\_\_  
\_\_\_\_\_ near \_\_\_\_\_

Known as \_\_\_\_\_, and owns, maintains and operates facilities for furnishing of \_\_\_\_\_ service and

WHEREAS, the Purchaser desires to obtain \_\_\_\_\_  
service from the Government, as required \_\_\_\_\_

\_\_\_\_\_, and which cannot be readily obtained from any other source; and

WHEREAS, construction of facilities in connection with the sale of such service to the Purchaser will not hinder the construction of public or private utility service facilities of a like nature;

WHEREAS, PURSUANT TO 10 USC 2481 the Government is authorized to sell utility service required by the Purchaser;

NOW, THEREFORE, in consideration of the premises and the mutual agreement herein contained, to be performed by the parties hereto respectively, it is agreed as follows:

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### GENERAL PROVISIONS

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1. **SERVICES TO BE RENDERED.** From and after the effective date of this contract, the government will furnish, subject to the limitations hereinafter provided, and the Purchases will furnish, subject to the limitations hereinafter provided, and the Purchaser will receive and pay for such utility services as described in Special Provisions \_\_\_\_\_ attached hereto and made a part hereof.
2. **PAYMENTS.** For and in consideration of the performance of the stipulations of this contract, the Purchaser shall pay the Government for service herein contracted for, at the rates and under the terms and conditions set forth in attached Special Provisions.
3. **USE OF SERVICE.** The Government, by reason of this contract, is not DA obligated to permanently supply the Purchaser with utility service. The service described herein is temporarily supplied as an accommodation to Purchaser as Government service is presently available, service is not otherwise readily obtainable by the Purchaser, and the furnishing of such service under the existing conditions is deemed to be in the public interest. Purchaser's use of such service is limited to such time as service can be supplied by the Government as surplus to its own needs, the Government has facilities and personnel available to supply the service and the service is not readily available to the Purchaser from another source. Purchaser shall use the services provided herein in such manner as not to in any way disrupt or interfere with the requirements of the Government of any other Purchase that may be served by the Government. Such services shall be for use by Purchaser and shall not be purchased for resale.
4. **CHANGE OF RATES.** The rates for service to be charged the Purchaser shall be the local prevailing rates, if any, for similar service, provided that the rates shall at all times produce a revenue which is not less than the cost to the Government of supplying the service, including losses, overhead, and capital charges. If during the life of this contract there should be an appreciable change in the applicable local prevailing rates or in the cost to the Government, the contract rates set forth herein will be adjusted as required to conform therewith and the Government agrees to furnish, subject to the conditions set forth herein, and the Purchaser agrees to take and pay for, such service at the adjusted rates from and after the date when such adjusted rates are made effective. The rates and charges applicable to the service or services contemplated herein will be renewed annually, or more often if necessary, in compliance with the above requirements.
5. **LIABILITY.** The Purchaser shall hold and save the Government, its officer, agents and employees, harmless from liability of any kind, for or on account of any claim or action that may be asserted in connection with the services furnished under this contract. The Government will not be held liable for failure to provide continuous service and will not guarantee quality or quantity of service to be supplied nor will the Government be made liable for termination of services.

6. **TERMINATION.** Services under this contract may be terminated by either party by written notice not less than thirty days in advance of the effective date of termination, provided that in the event of a national emergency proclaimed by the President, the Government may terminate this contract immediately without such advance notice. It is further mutually agreed that this contract will be terminated at such time as
- The service contemplated herein becomes readily available from another source, or
  - The installation furnishing said service becomes inactive, or
  - The Government no longer has facilities and/or personnel available to supply the service, or
  - The Government can no longer supply such service as surplus to its own needs.
7. **RECAPTURE.** In the event this contract is terminated in accordance with the terms hereof, the Government shall have the right to recapture immediately any utility facility it may have furnished in connection with the sale of any utility service to the Purchaser.
8. **FACILITIES TO BE PROVIDED.** The Government shall not be obligated in any way for the cost of making connections for Purchaser's service. Purchaser shall, at Purchaser's expense, install, maintain and operate all new facilities required for obtaining service, including suitable metering and regulating equipment and service connections to Government's utility system. Plans for all such facilities shall be subject to the approval of the Utilities Sales Officer and the installation of such facilities shall be subject to his supervision.
9. **LICENSE FOR FACILITIES.** The Government hereby grants to the Purchaser a license to enter upon and use a site or sites to be agreed upon between the parties hereto upon which the Purchaser shall install, operate and maintain the Purchaser's new facilities to be located on Government property for obtaining service; and such license shall continue in effect until termination of this contract. Facilities installed by the Purchaser on a Government installation will be removed promptly at the expense of the Purchaser upon termination of the service contemplated herein. Government land and facilities will be restored to their original condition at the expense of the Purchaser. If the Purchaser fails to so remove such facilities within ninety (90) days, they will be deemed to be abandoned and become Government property.
10. **OFFICIAL NOT TO BENEFIT.** No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit.
11. **COVENANT AGAINST CONTINGENT FEES.** The Purchaser warrants that no person or selling agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.
- "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.
- "Bona fide employee," as used in this clause, means a person employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain Government contract or contracts through improper influence.
- "Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.
- "Improper influence," as used in this clause, means any influences or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.
12. **DISPUTES.**
- This contract is subject to the Contract Disputes Act of 1978 (*41 U.S.C. 601-613*) (*the Act*).
  - Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.
  - "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a certain sum, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment or money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph d. (1) below. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, it is disrupted either as to liability or amount or is not acted upon in a reasonable time.
  - A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.
    - For Contractor claims exceeding \$50,000, the Contractor shall submit with the claim a certification that:
      - The claim is made in good faith.
      - Supporting data are accurate and complete to the best of the Contractor's knowledge and belief.

(c) The amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable.

(2) Certification.

(a) If the Contractor is an individual, the certification shall be executed by that individual.

(b) If the Contractor is an individual, the certification shall be executed by:

1 A senior company official in charge at the Contractor's plant or location involved; or

2 An officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.

e. For Contractor claims \$50,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$50,000, the Contracting Officer must, within 60 days decide the claim or notify the Contractor of the date by which the decision will be made.

f. The Contracting officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

g. The Government shall pay interest on the amount found due and unpaid from:

(1) The date the Contracting Officer receives the claim (*properly certified if required*), or

(2) The date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

h. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

i. The requirements of the Disputes clause at FAR 52.233.1 are supplemented to provide that matters involving the interpretation of retail rates, rate schedules, tariffs, riders, and tariff related terms provided under this contract and conditions of service are subject to the jurisdiction and regulation of the utility rate commission having jurisdiction.

13. DEFINITIONS. As used throughout this contract, the following items shall have the meanings set forth below:

a. The term "Secretary" means the Secretary, the Under Secretary, or any Assistant Secretary of the Department and the head of the Federal agency; and the term "his duly authorized representative" means any person or persons or board (*other than the Contracting Officer*) authorized to act for the Secretary.

b. The term "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or civilian employee who is a properly designated Contracting Officer; and the term includes, except as otherwise provided in this contract, the authorized representative of a Contracting Officer acting within the limits of his authority.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

Witness as to Signature of Purchaser

THE UNITED STATES OF AMERICA

by \_\_\_\_\_

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Official Title)

(Purchaser)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Business Address)